

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

SUMMIT 6 LLC,

Plaintiff,

v.

HTC CORPORATION, HTC AMERICA,
INC., LG ELECTRONICS INC., LG
ELECTRONICS USA, INC., LG
ELECTRONICS MOBILECOMM USA,
INC., MOTOROLA MOBILITY LLC,
APPLE INC., and TWITTER, INC.,

Defendants.

Case Action No. 7:14-cv-00014-O

JURY TRIAL DEMANDED

SUMMIT 6 LLC,

Plaintiff,

v.

APPLE INC.

Defendant.

Case Action No. 7:14-cv-00106-0

JURY TRIAL DEMANDED

TWITTER, INC.'S RESPONSE TO PLAINTIFF SUMMIT 6'S NOTICE OF CASE LAW

Defendant Twitter, Inc. hereby responds to Plaintiff Summit 6 LLC's Notice of Case Law in Support of Summit 6's Construction of Media Object Identifier. (Dkt. No. 255.) The unpublished Kansas district court decision that Summit 6 submitted, *High Point Sarl v. Spring Nextel Corp.*, 2012 U.S. Dist. 108485 (D. Kan. Aug. 3, 2012)—a case that Summit 6 already cited in its *Markman* briefing—does not support Summit 6's position.

Neither the disputed term “media object identifier” nor the term “graphical user interface” appears in the *High Point* opinion. Rather, the question before the *High Point* court was whether “interface arrangement” in the context of cellular radio-telephone networking conveyed sufficient structure to one of skill in the art of the patent. 2012 U.S. Dist. 108485, at *15. Explaining that the term “interface” is “[*not*] a *nonce term or a coined term that lacks a clear meaning*” but one that has “*a well-known meaning* to those of skill” in the art of the claimed invention, the court held that “interface arrangement” conveyed sufficient structure. *Id.* (emphases added).

Far from supporting Summit 6's position, *High Point* confirms the rule—already established by the Supreme Court and the Federal Circuit—that a structural claim limitation *must* convey sufficient structure to be definite. In *High Point*, that requirement was satisfied because the term “interface arrangement” was *not* a coined term and had a well-known meaning to those of skill in the relevant art.¹ But here, the opposite is true: as Summit 6's own expert concedes, the term “media object identifier” does *not* have a well-known meaning to those of skill in the art of Summit 6's patents, and *is* a “coined term that lacks a clear meaning.” See 1/29/15 Jones dep. at 83:20-84:15. As Twitter explained in its briefing and at the *Markman* hearing, in such cases, the patent specification must supply the missing structure. But the Summit 6 patents supply *no* structure for the “media object identifier”; accordingly, the term is purely functional, and indefinite.

¹ Indeed, unlike Summit 6's patents, the patent at issue in *High Point*, U.S. Patent No. 5,184,347 (attached hereto as Exhibit A), discloses ample information about the physical structures used in the claimed invention. See, e.g., Ex. A, Figures 1-6.

Summit 6 cannot rely on the word “interface” to salvage its claims. That word does not appear in the claim term at issue, “media object identifier.” Moreover, Summit 6 itself asserts that the “media object identifier” ***need not include*** a graphical user interface. *See* Pl.’s Opening Br. (Dkt. No. 217) at 34 (“[T]he media object identifier is a software component, *typically* including a graphical user interface.” (emphasis added)). Thus, even if the word “interface” by itself conveyed sufficient structure in the context of Summit 6’s patents—something the *High Point* case, which involves a different alleged invention, does not establish—that would not help Summit 6, because the “media object identifier” is asserted to be something broader than a graphical user interface, and it need not even include a graphical user interface. What it actually is, however, remains a mystery.

The Supreme Court has long prohibited claims that improperly broaden their scope by claiming structural elements functionally—i.e., by claiming what something *does*, rather than what it *is*. The only permissible way to claim a means for performing a particular function is to embrace the bargain that Congress created in 35 U.S.C. § 112(6)—in which case, by statute, the claim term is limited to the corresponding structures disclosed in the specification. *See Greenberg v. Ethicon Endo-Surgery, Inc.*, 91 F.3d 1580, 1582 (Fed. Cir. 1996) (“[T]he record is clear on why [§ 112] paragraph six was enacted. ... In place of the *Halliburton* rule, Congress adopted a ***compromise solution***, one that had support in the ***pre-Halliburton case law***: Congress permitted the use of purely functional language in claims, but it limited the breadth of such claim language by ***restricting its scope to the structure disclosed in the specification*** and equivalents thereof.” (emphases added)). With the term “media object identifier,” Summit 6 eschewed that bargain and seeks to cover *any* structure that performs the function of identifying media objects as claimed. That is precisely what the Supreme Court has prohibited. Accordingly, the term is indefinite.

Respectfully submitted,

KEKER & VAN NEST LLP

Dated: March 9, 2015

By: /s/ David J. Silbert

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 9th day of March, 2015, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document through the Court's CM/ECF system under Local Rule 5.1(d). Any other counsel of record will be served by a facsimile transmission and/or first class mail.

/s/ David J. Silbert

David J. Silbert